(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

APPEAL FROM ORDER NO.63 OF 2003

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S.S. Kantak, Advocate for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate, with Mr. A.D. Bhobe, Advocate, for the Respondent.

CORAM : SMT. NISHITA MHATRE,J.

DATE : JANUARY 29, 2004.

P.C.:

The impugned Order restrained the Appellant from drawing water from the suit well and in any manner interfering with the Plaintiff/Respondent's possession of the suit well and also from using any pump set near the suit well till the disposal of the main suit. The contention raised on behalf of the Appellant that the Trial Court has not considered the counter-claim raised by the Defendant and the pleadings in the Written Statement, cannot be accepted. On a prima

facie view taken by the Trial Court, the Trial Court has found that the Appellant and his father had admitted that the Plaintiff//Respondent was the sole owner in possession of the suit well as well as the suit property, although now this position is disputed by the Appellant. At a prima facie stage, the Trial Court could not come to any conclusive finding on that fact. Moreover, the Trial Court has considered the fact that the contract of drawing water does not subsist till the present date and, therefore, there was no reason to deny the Plaintiff the injunction. I see no reason to interfere with the findings of the Trial Court.

Rejected.

SMT. NISHITA MHATRE,J.

ac.